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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,702	06/29/2000	Mark R. Johansen	470AM	7467

7590 10/20/2003

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EXAMINER
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ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/20/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/606,702

Applicant(s)

JOHANSEN, MARK R.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 23,25,26 and 28-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23,25,26 and 28-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 23, 25, 26, 28-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kani (U.S. 5,762,859) in view of Arnold et al. (U.S. 6,290,094) and Duhaime et al. (U.S. 5,425,470).

Kani discloses the claimed invention except for closure being compression molded, the parison being multilayered and the cap being heat welded to the container. Arnold et al. teaches that it is known to compression mold a closure with a blow molded container (see col. 4 lines 65 through col. 6 line 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Kani with the closure being compression molded, instead of blow molded, as taught by Arnold et al., in order to increase the strength of the closure.

Duhaime et al. teaches that it is known to provide a parison which is multilayered (see col. 2 lines 17-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified method of Kani with the parison being multilayered, as taught by Duhaime et al., in order to increase the strength and resistance of the container and closure.

Duhaime et al. also teaches that it is known to provide a heat weld a closure to the container (see col. 3 lines 16-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified method of Kani with the closure being welded onto the container, as taught by Duhaime et al., in order to permanently seal the container after initial use.

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Kani teaches a method wherein a pair of mold halves (10, 11) are provided. The mold halves define a first mold cavity and a second cavity for receiving a parison (col. 4 lines 21-60). The two layers of the parison are taught by Duhaime et al. The compression of the flash section in the second cavity is taught by Arnold et al. Kani teaches providing pressurizing fluid to the closed mold halves in col. 4 lines 60-66. After the container is blow molded, an opening is formed, the cap is separated and then disposed over the opening (lines 19-24 of the Abstract).

3. Claims 23, 25, 26 and 28-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duhaime et al. (U.S. 5,425,470) in view of Arnold et al. (U.S. 6,290,094) and Kani (U.S. 5,762,859). Duhaime et al. disclose the claimed invention except for the cap being simultaneously compression molded. Arnold et al. teaches that it is known to compression mold a cap while integrally joined to a blow molded container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Duhaime et al. with the closure being compression molded, as taught by Arnold et al., in order to easily form the closure simultaneously with the formation of the container.

Kani teaches that it is known to remove an integrally formed closure and reapply the same closure to the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified method of Duhaime et al. with the integrally formed closure being removed from the container and then reapplied, as taught by Kani, in order to reduce the number of steps needed to form a closure by having the closure formed simultaneously with the container.

Duhaime et al. teaches a method of forming a fuel tank comprising providing mold halves 14 and 16, providing a parison (col. 2 lines 21-22), providing a pressurizing fluid (col. 2 lines 43-44), separating a cap (col. 2 line 49), heat welding a cap to the container (col. 2 lines 63-64 and col. 3 lines

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16-17). The parison of Duhaime et al. has a vapor barrier layer 24 of EVOH between inner and outer layers 20, 22 of HDPE.

### ***Response to Arguments***

4. Applicant's arguments filed July 10, 2003 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

5. **THIS ACTION IS MADE NON-FINAL.**

6. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Technology Center at (703)872-9302 for regular amendments and (703)872-9303 for after-final amendments. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Technology Center 3700 will be promptly forwarded to the examiner.

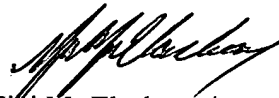
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in

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the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloschway/nme  
Patent Examiner  
October 17, 2003